May 2, 2022

Dear Members of the Senate Committee on Natural Resources and Energy,

The undersigned organizations have advocated for local and state regulatory reforms to make housing development and affordable housing development easier in Vermont.

We write to you today to explain why we believe the provisions of S.234 that would move Act 250 appeals to an Environmental Board (previously H.492) would create yet more impediments preventing construction of sufficient new housing that is desperately needed for Vermonters of modest means.

As you know, most housing projects require multiple permits from multiple bodies. These include zoning permits from municipalities, environmental permits from the Agency of Natural Resources, and Act 250 permits from district commissions. Prior to 2004, appeals of zoning and environmental permits went to the Environmental Court, while appeals of Act 250 permits went to the former Environmental Board. This created significant problems and project delays due to potentially inconsistent outcomes and the need to sequence various appeals.

As part of the comprehensive permit reform enacted by the General Assembly in 2004, it was determined that consolidating all land use and environmental appeals in the Environmental Court was a better path forward. The reasons for this change were well-understood and have been effective. Funneling all appeals for a major project through a single appeals court allowed for combined and consistent review of projects by a specialized court with expertise in permitting matters. Judges provide objective legal analysis, and their decisions are then posted online and available to guide the entire community with respect to the rules and standards going forward.

Some have argued that revisiting a system of dual track appeals would be beneficial, but our real-world experiences attempting to finance, permit and construct affordable housing across Vermont tell us otherwise. Additional appeal tracks create more opportunities for those seeking to delay needed and meritorious projects into oblivion. Two different appeal bodies create a substantial risk of inconsistent outcomes that are not resolved until either a Supreme Court appeal or modification of the project subject to the other appeal track. Settling matters with different issues and parties before separate appeal bodies makes a negotiated resolution much more difficult to achieve.

We live in a state and broader community where housing needs are increasing at the same time costs are escalating rapidly. This means that delay inevitably exacerbates an already challenging environment in Vermont for constructing much-needed affordable housing.

In our experience, process for the sake of process alone does not improve the quality of a project, but simply increases its cost for everyone – housing funders, builders and, ultimately buyers.

These concerns are not based upon a view that individuals serving on the proposed Environmental Review Board would not be capable and well-meaning. To the contrary, even under the best of circumstances with the highest quality outcomes, a dual track appeal system still creates all of the problems mentioned above – unnecessary delay, potentially inconsistent outcomes, the need for multiple appeal hearings, impediments to timely compromise settlements, and increased costs.

Act 250 provides the opportunity for the diverse members of district commissions to bring a broader perspective to decision-making. Most applications do not progress pass the district commission stage. When they do, however, the benefits of a specialized court conducting consolidated appeals regarding projects far outweigh any perceived benefits from having Act 250 appeals heard by separate lay board while other permit appeals regarding the same project are being decided by a judge.

The provision of affordable housing to Vermonters requires a permit process that does not increase the development costs of each housing unit to a point where they are no longer affordable.

The dual track appeal system that this section of S.234 (previously H. 492) would re-establish would unavoidably make our jobs, as housing advocates, more difficult. It is our sincere belief that the legislature should be focusing on ways to make housing more available and affordable, not less so. Unfortunately, with the H. 492 provisions included, S.234 would make our housing goals that much harder to achieve.

Sincerely,

Mayor Kristine Lott, Winooski
Mayor Miro Weinberger, Burlington
Senator Ginny Lyons, Chittenden County, Chair, Health and Welfare Committee
Senator Thomas Chittenden, Chittenden County
Rolf Kielman, TruexCullins
Vincent Bolduc, South Burlington Affordable Housing Committee
Erik Hoekstra, Redstone
Eric Farrell, Farrell Properties, Cambrian Rise
Chris Trombly, Chair of South Burlington Affordable Housing Committee.
Evan Langfeldt, CEO, O'Brien Brothers
Patrick O'Brien, S.D. Ireland
Will Belongia, Vermont Community Loan Fund
Michael Simoneau, Geri Reilly Real Estate
Dale Wernhoff, Hinesburg Affordable Housing Committee
Chris Snyder, President, Snyder Homes
Ken Braverman, The Braverman Company
Tim Sampson, Director, Downs Rachlin Martin PLLC
Chris Roy, Downs Rachlin Martin PLLC, former Chair of the CCRPC, Former Environmental Board Member
Jessie Baker, South Burlington City Manager
Tim Barritt. South Burlington City Councilor
Cathy Davis, Lake Champlain Regional Chamber of Commerce
Kelly Devine, Burlington Business Association
Charlie Baker, Chittenden County Regional Planning Commission
David White, White and Burke